

DISTRICT OF MINNESOTA

FOURTH DIVISION

Patricia Welsch, by her father and natural guardian, Richard Welsch, et al, on behalf of herself and all other persons similarly situated,
 Plaintiffs,
 vs.
 Arthur E. Noot, et al,
 Defendants.

MEMORANDUM ORDER

No. 4-72-Civ. 451

Three motions by defendant Commissioner Noot are now before the Court. First, defendant Noot moves this Court for an Order extending by 30 days the time for an appeal from this Court's March 23, 1982 Order pertaining to compliance with paragraphs 37 and 39 of the Consent Decree. Plaintiffs do not oppose this motion, and the Court will therefore grant it.

Second, defendant Noot moves this Court for a partial stay of the effective dates stated in paragraphs 1, 6(c), and 7(d) of this Court's March 23, 1982 Order. Paragraph 1 requires the submission of certain data to the monitor in an attempt to determine the amount of funding necessary for full compliance under paragraphs 37 and 39; paragraphs 6(c) and 7(d) refer to motions that must be made by defendants to establish amounts in the salary accounts for FY '82 that "could reasonably be expected to be unspent" based on a number of criteria. Defendant Noot requests a 30 day stay of the dates presently specified by these paragraphs. Plaintiffs oppose this motion on the grounds that it is untimely and on the grounds that it will delay further the implementation of the Court's March 23, 1982 Order. The Court recognizes that granting the stay may well mean that the "full funding" level may not be established by the beginning of FY '83 on July 1, 1982, but the Court has determined that the defendant's request is a fair one, and should be granted. The parties indicated to the Court that negotiations are or will be proceeding in an attempt to resolve some of the issues surrounding the March 23, 1982 Order: the Court urges the parties to pursue these negotiations and attempt to resolve these matters by consent.

Finally, defendant Noot moves this Court for a protective Order pursuant

to Rule 26(c) of the Federal Rules of Civil Procedure to prevent the depositions of Deputy Commissioner Kevin Kenney and Mental Retardation Program Director Ardo Wrobel regarding compliance with this Court's January 13, 1982 Order. Plaintiffs had noticed these two depositions for April 15, 1982, but have now agreed to defer the taking of these depositions until after the negotiation process referred to above is completed. Rule 26(c)(1) provides that the Court

may order that "the discovery not be had," but "a strong showing is required before a party will be denied entirely the right to take a deposition." 4 Moore's Federal Practice ¶ 26.69 at 26-495 (2d ed. 1982). Defendant Noot suggests that plaintiffs seek to develop their "unsubstantiated suspicion" that defendants did not comply with the Court's Order or acted in bad faith, and alleges that the depositions constitute harassment. Plaintiffs contend that there are a number of factual issues regarding compliance that could fruitfully be explored through these depositions. The Court cannot grant defendant Noot's motion absent a clear showing of bad faith or harassment on the part of plaintiffs, see id., and the Court finds that no such showing has been made here. The Court will therefore deny defendant Noot's motion for a protective Order.

Based upon the foregoing;

IT IS ORDERED THAT:

1. Defendant's motion for a 30 day extension of time to appeal the Court's March 23, 1982 Order is granted.
2. Defendant's motion for a 30 day stay of the effective dates stated in paragraphs 1, 6(c), and 7(d) of the Court's March 23, 1982 Order is granted.
3. Defendant's motion for a protective Order preventing the depositions of Deputy Commissioner Kevin Kenney and Mental Retardation Program Director Ardo Wrobel regarding compliance with this Court's January 13, 1982 Order (filed January 15, 1982) is denied.

April 22, 1982.

/s/ Earl R. Larson

United States Senior District Judge